

CFPB Redlining Loss Casts Doubt on Its Fair Lending Future

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Lori Sommerfield, a partner with Troutman Pepper, was quoted in the *Law360* article, “[CFPB Redlining Loss Casts Doubt on Its Fair Lending Future.](#)”

Lori Sommerfield, a partner in the consumer financial services practice group at Troutman Pepper, called the ruling a “very significant” result that could chasten the CFPB in future fair lending cases.

“It’s surprising to see a court weigh in against a long-standing regulation that clearly anticipates including prospective applicants within its scope, and it represents another significant legal setback for the CFPB,” Sommerfield told *Law360*.

“It would appear to eviscerate the CFPB’s ability to bring redlining complaints that are based on a theory of marketing discrimination,” she added. “I just don’t know how they’d be able to bring any of these in the future with this case as precedent.”

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“If this holding was more widely adopted among other federal courts, it could force the CFPB to refer all redlining cases to the DOJ in the future,” Sommerfield said.

Unlike the CFPB, the DOJ can file lawsuits under both ECOA and the Fair Housing Act, another fair lending law. The FHA also prohibits discrimination in mortgage lending — in other words, redlining — but it uses more expansive wording that avoids the potential “applicant” bottleneck of ECOA.

As a result, the reasoning of the Townstone decision “wouldn’t impact mortgage redlining cases that are brought by the DOJ,” Sommerfield said.

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“Targeted online advertising is very popular in the financial services industry,” Sommerfield said. “But if the CFPB attempted to bring any ECOA claims in the future based on discriminatory marketing or advertising, they wouldn’t be allowed under the reasoning of the Townstone court.”

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“They could bring new [enforcement] actions that are strictly based on a UDAAP-as-discrimination theory,” Sommerfield said. “We have never seen the CFPB do that, but that’s not to say they might not try that in the future, thinking that it would be a more productive avenue because of how broad their UDAAP authority is.”

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